

Appeal No: DS21/0/0021

**AN BINSE LUACHÁLA
VALUATION TRIBUNAL**

DERELICT SITES ACT, 1990-2020

TRUSTEES OF MONKSTOWN PARISH

APPELLANT

AND

CORK COUNTY COUNCIL

RESPONDENT

In relation to the market valuation of the property known as the Former Barnahely National School, Loughbeg, Ringaskiddy, County Cork (“the Site”).

TRIBUNAL Dolores Power - MSCSI, MRICS

Deputy Chairperson

TJ Kearns -B.Sc. (Surv.), MRICS

Member

Mema Byrne BL

Member

**JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 17th DAY OF NOVEMBER, 2022**

Appearances

For the Appellant: Mr Kieran Hughes BL,

Mr Diarmuid O’Cathain, Solicitor

Mr Hugh McPhillips, Estate Agent, M.I.P.A.V M.M.C.E.P.I.

For the Respondent: Mr O’Leary, Solicitor

Mr John Ryan, Estate Agent, BSc Prop. SCSi, RICS

THE APPEAL

1. On the 10th of August, 2021 a copy of a Notice of Determination of Market Value issued in accordance with s. 22 of the Derelict Sites Act, 1990 Act ('the 1990 Act') which was sent to the Appellant indicating a market value of €40,000 in respect of urban land situated at the former National School, Barnahely, Ringaskiddy, Co. Cork (hereinafter referred to as "the Derelict Site").
2. The date by reference to which the value of the Derelict Site was determined is the 10th August 2021.
3. By Notice of Appeal received on the 17th of September 2021 the Appellant appealed against the Respondent's determination of value. The sole ground of appeal as set out in the Notice of Appeal is that the determination of the valuation of the Derelict Site is incorrect because it is too high. Briefly stated it is as follows:

"That the valuation of the market value of the Land is too high as it does not take account of the fact that a neighbouring land owner is claiming ownership of the Land and has threatened legal proceedings against the Appellants, due to the condition of the Premises and the dispute over ownership, making the Land is almost unsaleable" (sic).

4. The Appellant considers that the market value of the Derelict Site ought to have been determined in the sum of nil value (€0.00) or a nominal value of two thousand Euro to five thousand Euro (€2,000.00-€5,000.00).

THE HEARING

5. The appeal proceeded by way of a remote hearing held via Zoom platform, on the 19th September 2022.
6. In accordance with the Valuation Tribunal (Appeals) Rules 2019 the parties' valuers exchanged their respective valuation reports prior to the hearing and submitted them to the Tribunal. At the oral hearing, each witness, having taken the oath, adopted their valuation report as their evidence-in-chief in addition to giving oral evidence.

RELEVANT STATUTORY PROVISIONS

7. A local authority is required by s. 22 of the 1990 Act to determine, after a derelict site has been entered on the derelict sites register, maintained under s. 8 of the 1990 Act, the unencumbered market value of that site in such manner and by such means as they think fit. In that regard, a local authority may authorise a person suitably qualified to inspect the site and report to them on the site's market value.
8. Under s. 2 of the 1990 Act 'market value' means the value of the relevant urban land assessed in accordance with s. 22 of the 1990 Act. That assessment is undertaken by:

"estimating or causing to be estimated the price which the unencumbered fee simple of such land would fetch if it was sold on the open market on the valuation date in such manner and in such conditions as might reasonably be calculated to obtain for the vendor the best market price for the land."

THE FACTS

9. On the basis of the evidence adduced by the parties, the following facts in respect of the physical condition of the Derelict Site were agreed or proved to the satisfaction of the Tribunal:
10. That the site was 0.139 acres with a roofless ruin of an old stone National School on the site. The site is largely overgrown with trees and shrubbery. The subsoil is not known, nor was it known whether the site was serviced. Temporary fencing has been erected in the Site which was evidenced in photographs submitted to the Tribunal.
11. The Site is situated directly across the road from Ringaskiddy National School and beside the church of the parish. Ringaskiddy is 15km south east of Cork City and is an area known for industrial development and transport.
12. The Appellant's title is possessory title, there is no evidence that it is subject to a lease, and the site is not registered land.
13. It was agreed that the site had at some time been used as a national school and that since the school had become disused it had not had any further formal uses. It was agreed that the neighbour, a Mr Anthony O'Flaherty alleged that he had a claim for adverse possession in or about 2006. The Appellant applied for planning permission in 2014 to demolish the old national school building and Mr O'Flaherty, through his solicitor maintained that he had a

claim in respect of possessory title to the Site, and specifically by letters dated 30th April 2014 and 5th November 2014 which stated that he was the owner of the Site and threatened legal proceedings against the Appellant should it attempt to enter onto the Site or deal with the Site in any manner. As a result the Appellant did not demolish the old school building. The parties agreed that at present a Third Party alleges that he has squatters rights over the Site although he has not brought proceedings in respect of same. Mr. Ryan, when valuing the Site for the Respondent, did not conduct a "Red Book" valuation of the Site which would be the standard method of valuing Site. Specifically, he did not take into account any legal issues, specifically he did not make any allowance in determining the value of the Site that there was a claim of adverse possession in respect of the Site by the adjoining owner. It was agreed that Mr Ryan's own caveats and conditions contained in his valuation of the Site provides that legal issues "may have a significant bearing on the value of an interest in the property".

14. The Site is adjacent to land owned by Mr Anthony O'Flaherty who is now claiming adverse possession of the Site.

15. There was no evidence of a special purchaser being interested in the Site.

APPELLANT'S CASE

16. Mr Hugh McPhillips gave evidence for the Appellant. Mr. McPhillips submitted that he is very familiar with the area and the Site in question, and he was aware that the Site was on the Derelict Sites Register and that there was a dispute in relation to the Site in which a person was claiming adverse possession of the Site. Mr McPhillips stated that he was not aware of when the temporary fencing was erected on the Site, but that regardless of who put up the temporary fencing, in his opinion because of the condition of the Site, the location of the Site, and the adverse possession claim, the Site is practicably unsaleable. Mr McPhillips said that there was always a possibility somebody would take a gamble on buying the Site giving the Site a nominal value of €2,000- €5,000 (two thousand Euro to five thousand Euro).

17. On cross examination Mr McPhillips was asked whether if there was any substance to the claim in that no legal proceedings had issued and no steps have been taken in 8 years in respect of progressing the claim. Mr McPhillips stated that the fact that no steps had been taken in 8 years did not affect his opinion.

18. Mr O'Cathain, solicitor for the Appellant gave evidence that the Appellant's title is possessory title and referred the Tribunal to a Vesting Order of The Commissioners of Charitable Donations and Bequests for Ireland dated 14th May 2013.

19. It was submitted that the title was possessory title. Notices were published prior to the Charity Commissioners issuing the Vesting Order on 14th May 2013, and no objections were made by anyone to the application for the Vesting Order.
20. Having obtained the Vesting Order the Appellants then sought planning to demolish the building on the Site. The Appellants obtained planning which was appealed by Mr O’Flaherty. The Appellants had their grant of planning upheld by An Bord Pleanala, and at that point Mr O’Flaherty threatened legal proceedings if any action was taken on the part of the Appellants.
21. Mr O’Cathain clarified that the correspondence between Mr O’Flaherty and Cork County Council from 2006 demonstrates that Mr O’Flaherty had in fact erected fencing on the Site at that time and that further correspondence shows that the Appellants then erected fencing and that since then Mr O’Flaherty has erected further signs on the fencing saying “no trespassing”. It was confirmed that Mr O’Flaherty is an adjoining land owner.
22. The Appellant said that it paid the Derelict Sites levies when they were lower and affordable rather than litigate with Mr. O’Flaherty. However, due to Covid, Church income is down and now the levy has been increased. Mr O’Cathain explained that since the 1942 Deed appointing new trustees, it followed that no new trustees needed to be appointed as a Trust Company was subsequently set up. Mr O’Cathain submitted that Mr O’Flaherty’s father asked the Parish for permission to store potatoes in the building on the Site, and did so with permission of the Parish. Mr O’Cathain was asked why the previous valuations were not appealed if there was a dispute in relation to the Site. Mr O’Cathain submitted that the Appellant was willing to absorb the levies until their income went down and the levy went up. It was submitted that the Site is unsaleable.

THE RESPONDENT’S CASE

23. Mr Ryan, on behalf of the Respondent, gave evidence that he had conducted a “drive by” valuation of the Site which also involved using a drone to take photographs of the Site. He gave evidence that at the time of the valuation he understood the Site to be unregistered land measuring approximately 0.2 acres. His report states that in relation to services to the Site “All services, ESB and utilities are assumed to be at hand” and in relation to title “We assume the property has the benefit of good marketable freehold title”. Mr Ryan indicated that he was later informed that the Site was in fact 0.139 acres and that there was no clear freehold title to the Site and in the circumstances he revised his valuation to €35,000 (thirty-five thousand Euro).
24. Upon questioning Mr Ryan stated that the Site was not zoned but it had the benefit of an existing building on it, and in his opinion, it would be more likely to obtain planning because of there being an existing building on the Site. In relation to the assumption in Mr Ryan’s report with regard to services, Mr Ryan stated that this would not apply to a sewer being at

the Site as many rural locations would have a septic tank. Mr Ryan was asked whether he had taken any account of the fact that a claim was being made in respect of the Site and whether in his opinion this would affect the valuation. Mr Ryan stated that he knew the Site was not registered and therefore taking instructions from the Council valued the Site as a leasehold title but he did not know the length of the lease. He stated that he did not take account of the fact that an adverse possession claim was being made as he had no evidence that the claim had any validity to it or that anyone was actually in occupation of the Site and accordingly he took no cognisance of the dispute.

25. Upon cross examination Mr Ryan confirmed that he had not received any instructions in respect of an adverse possession claim on his initial valuation of the Site. Mr Ryan stated on revaluing the Site he was told there was some type of claim but that the Appellant had put up the fencing. Mr Ryan was asked whether he would change his valuation if he was aware that Cork County Council had been corresponding with the person now claiming adverse possession of the Site. Mr Ryan said it wouldn't affect his valuation unless he could clarify the strength of the person's claim.
26. Mr Ryan said he didn't do a planning search. Mr Ryan was asked whether it would have affected his valuation if he had known that when the Appellant made a planning application to demolish the building on the Site that the person who is claiming adverse possession made an objection to the planning application and threatened an injunction if the Appellant knocked down the building. Mr Ryan said he would have sought clarity from his clients as to whether there was any evidence in relation to the person's claim. Mr Ryan confirmed that he had never seen a lease nor read the vesting Order dated 14th May 2013. Mr Ryan submitted that he had not done a "Red Book" valuation, but a "drive by" valuation which is different.
27. Mr O'Leary, for the Respondent, confirmed that another section of the local authority instructed Mr. Ryan (the Derelict Sites section rather than the Valuations Section). Mr O'Leary confirmed that the Respondent was aware that there had been a claim in relation to adverse possession as solicitors acting on behalf of Mr Anthony O'Flaherty had written to the Respondent in and around 2006. However, the Valuations Section of the Respondent had not been made aware of that correspondence when dealing with the valuation of the Site and therefore did not inform Mr Ryan of an adverse possession claim when instructing him to value the Site. Mr O'Leary stated that the Valuations Section of the Respondent only became aware of the correspondence in relation to an adverse possession claim through the Appellant's submissions.
28. Mr. O'Leary submitted that a Notice pursuant to s.29 of the Derelict Sites Act, 1990 was served on the Appellant in July 2011 asking them to disclose their interest in the Site. The Respondent received a response which confirmed that the Appellant was the owner of the Site. In 2011 Notice of Intention to enter the Site on the Derelict Sites Register was given to the Appellant and the Site was valued at €15,000. Between 2012- 2016 Notices requesting

payment of Derelict Sites levies were served on and paid for by the Appellant. A further s.22 notice was served in 2015 valuing the Site at €30,000 and further levies paid on foot of that notice (the only year the Respondent did not have confirmation of payment was 2019). The Respondent submitted that the Appellant had never raised the issue of a dispute over the title with the Valuations Section of the Respondent over the period 2011 to 2020 and the valuations of the Site over that period. Mr O'Leary submitted that the only claim that was made in relation to the Site was in the form of a letter exchange in 2014 and that Mr O'Flaherty is not on the Site and nothing has happened since.

29. It was put to the Respondent that the Valuation Section of the Respondent was aware of the title dispute prior to the valuation, and that it would present a problem as the dispute went back as far as 2006 through 2008 and 2014 and Mr Ryan should have been informed about the dispute. The Respondent submitted that Mr Ryan was informed about the dispute but that the Respondent did not think there was any substance to the claim. Mr O'Leary submitted that the Trustees erected the fencing in 2011, showing that they believed that they had title to the property, and that Mr O'Flaherty did not take that fencing down, and that nothing has happened since 2014 in relation to the dispute over the Site.

FINDINGS AND CONCLUSIONS

30. On this appeal the Tribunal is required to determine the market value of the Derelict Site as defined in s. 2 of the Act assessed in accordance with s. 22 of the Act.
31. The Tribunal finds that the ownership of the subject Site is in dispute. This is evidenced from the correspondence submitted by the Appellant evidencing that the adjacent neighbour, Mr O'Flaherty is claiming that he has possessory title to the Site and has engaged solicitors in respect of his claim and has threatened legal proceedings against the Appellant if it attempts to deal with the Site.
32. The fact that a third party is claiming adverse possession of the subject Site would have a negative impact on what a willing purchaser would be prepared to pay for such Site on the open market. A legal dispute relating to adverse possession in respect of the subject Site make it a less attractive proposition to any willing purchaser.
33. The Tribunal finds that the Respondent's basis of valuation was incorrect in assuming that the subject site "has the benefit of good marketable freehold title". The Respondent's own valuation caveats and conditions provided that legal issues "may have a significant bearing on the value of an interest in the property" however the existing ownership dispute relating to the subject site were not reflected in the Respondent's valuation.
34. The Valuations put forward by both the Appellant and Respondent's Valuers/Expert witnesses fall short of the required SCSI/RICS Red Book Valuation Standards and as such

offers little assistance to the Tribunal. Neither party included any information regarding comparison properties to support their Valuations.

35. The Tribunal holds that the approach argued for by Mr.O'Caithain, the Appellant's legal representative, is the more correct and preferred approach. The fact that a person was claiming adverse possession, regardless of the strength of his case, would deter almost all prospective purchasers due to the risk of having to fight a Court case with all of the attendant risks, inconvenience and expense. The Tribunal finds that it would be reasonable to assume that someone would pay a small sum for the Site in the hope of being able to resolve the legal dispute in due course.

DETERMINATION

Accordingly, for the above reasons, the Tribunal allows the appeal and determines that the market value of the Derelict Site falls to be amended to **five thousand Euros** [€5,000] as of the valuation date.

RIGHT OF APPEAL

Any party who is dissatisfied with the Tribunal's determination as being erroneous in point of law may declare such dissatisfaction and require the Tribunal to state and sign a case for the opinion of the High Court

This right of appeal may be exercised only if a party makes a declaration of dissatisfaction in writing to the Tribunal so that it is received within 21 days from the date of the Tribunal's Determination and having declared dissatisfaction, by notice in writing addressed to the Chairperson of the Tribunal within 28 days from the date of the said Determination, requires the Tribunal to state and sign a case for the opinion of the High Court thereon within 3 months from the date of receipt of such notice.